

DOCUMENT RESUME

02235 - [A1512500]

[Purchase of Land at Prairie du Chien, Using Department of Housing and Urban Development Community Development Block Grant Funds]. B-188363. May 23, 1977. 5 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Issue Area: Domestic Housing and Community Development (2100).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: Community and Regional Development (450).

Organization Concerned: Department of the Army: Corps of Engineers; Department of Housing and Urban Development.

Authority: Water Resources Development Act of 1974, sec. 2 (P.L. 93-251; 88 Stat. 12). Flood Control Act of 1936, ch. 688 (49 Stat. 1571, as amended; 33 U.S.C. 701c). Housing and Community Development Act of 1974, title I (P.L. 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq. (Supp. V)); 52 Comp. Gen. 558; 52 Comp. Gen. 563-567. 24 C.F.R. 570.200(a) (1).

The Acting Chief of Engineers requested a decision on the propriety of a local sponsor of a flood-prevention project to provide the necessary lands, easements, and rights-of-way using the Department of Housing and Urban Development grant funds. Provision for such use of funds is authorized in 42 U.S.C. 5305 (a) (9) (Supp. V). (SS)

2500
02235

J. E. P. Lawrence
G G H

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188363

DATE: May 23, 1977

MATTER OF: Purchase of land at Prairie du Chien--use of HUD community development block grant funds

DIGEST: Lands purchased with "entitlement" block grant funds under title I of Housing and Community Development Act of 1974 may be accepted by the Corps of Engineers for its local flood control projects. The provisions of 42 U.S.C. § 5305 (a)(9) (Supp. V, 1975), specifically authorize the use of grant funds thereunder to pay the non-Federal share required in another Federal grant project undertaken as a part of a community development program. The local flood control project program, governed in part by 33 U.S.C. § 701c (1970), is analogous to a Federal grant-in-aid program with the local "matching" share being the provision of the land without cost to the United States.

The Acting Chief of Engineers, Department of the Army, has requested our decision on the propriety of allowing the local sponsor of a Corps of Engineers flood prevention project to provide the necessary lands, easements, and rights-of-way by acquiring them, in whole or in part, through the use of grant funds administered by the Department of Housing and Urban Development (HUD).

Under the provisions of section 2 of the Water Resources Development Act of 1974, Pub. L. No. 93-251, March 7, 1974, 88 Stat. 12, the Secretary of the Army is authorized to plan, develop, and construct a local flood protection project in the upper Mississippi River basin at Prairie du Chien, Wisconsin, at the estimated cost of \$1,840,000.

Applicable to this project are the provisions of section 3 of the Flood Control Act of June 22, 1936, ch. 688, 49 Stat. 1571, as amended, 33 U.S.C. § 701c (1970) which provided in pertinent part:

"After June 22, 1936, no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of the Army

B-188363

that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project * * *."

The Acting Chief of Engineers writes that he has learned that HUD is prepared to offer the city of Prairie du Chien a grant from its community development block grant program, established under title I of the Housing and Community Development Act of 1974 (1974 Act), Pub. L. No. 93-383, approved August 22, 1974, 88 Stat. 833, 42 U.S.C. §§ 5301 et seq. (Supp. V, 1975). The city would use the grant funds to purchase the necessary lands and easements for the Corps to erect the local flood control project. However, in view of the provision of 33 U.S.C. § 701c, *supra*, requiring that the lands be provided without cost to the United States, the Acting Chief is not sure the Corps can accept land so acquired by the locality. We understand that a similar problem has arisen with respect to a flood control project to be erected in Sturgis, South Dakota, and also that the Corps, if we concur, will allow such lands to be used in all its water resources projects where the local community, acting as the non-Federal project sponsor, is eligible for grants under the HUD community development grants.

Since the enactment of 33 U.S.C. § 701c, *supra*, in 1936, the Congress has in some instances changed the nature of the Federal assistance to State or political subdivisions. In title I of the 1974 Act, *supra*, Congress consolidated several prior categorical loan and grant programs for community development into a new single program of community development block grants. It significantly changed traditional grantor-grantee relationships by establishing a statutory entitlement grant formula under which cities over 50,000 in population and urban counties over 200,000 in population are entitled to grant amounts determined by a formula based on population, extent of housing overcrowding, and extent of poverty.

The Act authorizes the Secretary of HUD to approve an application under the entitlement grant program unless it is found that the applicant's description of community and housing needs and objectives is plainly inconsistent with generally available significant data; that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or that the application does not comply with the requirements of the Act or other applicable law or proposes activities which are ineligible under the Act. Unless the Secretary within 75 days of receipt of an application notifies the applicant that its request for assistance has been denied for one of the three specific reasons just given, the application is deemed automatically approved. In addition to the distribution of funds provided

B-188363

under the statutory formula (referred to as the "entitlement program"), the Act provides for a separate discretionary fund to be used by the Secretary for a variety of statutorily defined purposes.

In a letter dated December 23, 1976, to the Department of the Army HUD's Associate General Counsel for Community Development responded to the Corps' inquiry as to the use of these grant funds to acquire the land to be used for the Corps' local flood protection program. He stated therein that:

"* * * If an application meets the overall criteria for HUD approval established under the 1974 Act and the Department regulations, funding of all eligible activities proposed thereunder would have to be approved. In such instance, the above mentioned prohibition under the Flood Control Act could not be a factor in HUD's obligation to fund a proposed acquisition of property undertaken pursuant to § 570.200(a) (1) of [24 C.F.R.], since the use of the property is not an element of eligibility under that section. Whether property so acquired may be utilized for the Corps flood control project would therefore appear to be entirely dependent on the requirements of the Flood Control Act." (Emphasis supplied.)

The Acting Chief of Engineers states that since HUD has the primary responsibility for administering the community development block grant program and since HUD has determined that 33 U.S.C. § 701c does not impact on its determination to permit grant-in-aid funds to be utilized for an otherwise eligible community development activity, the Corps proposes to accept the lands, easements, and rights-of-way acquired in whole or in part with HUD grant-in-aid funds and offered for the Corps flood control project as meeting the project's local cooperation requirements without regard to the ultimate source of financing for that requirement. He states that the Corps believes this is reasonable since Congress intended that the HUD grant funds "be utilized for these purposes" and the 1974 Act was enacted 38 years after the Flood Control Act provision and "made no specific prohibition on the use of HUD funds for this purpose although it made specific restrictions on the use of the grant funds for other Federal grant-in-aid programs."

As we noted earlier, the block grant concept adopted in the 1974 Act represents a departure from previous grantor-grantee relationships and made certain local sponsors entitled to grant funds, based on a statutory allocation formula, provided that they use the funds for any of a variety of broadly outlined community development functions.

We have consistently held that in the absence of specific statutory authority, Federal grant-in-aid funds from one program may not be used to satisfy the local matching requirements of another Federal grant-in-aid program. In the case of the 1974 Act, however, section 105(a)(9) thereof, 42 U.S.C. § 5303(a)(9), *supra*, specifically authorizes the use of the grant funds authorized under that Act to pay the non-Federal share required in connection with a Federal grant-in-aid program undertaken as a part of the community development program. (See 52 Comp. Gen. 558, 563-567 (1973) which deal with an analogous question.)

The Acting Chief of Engineers states, however, that the Corps considers the local flood control projects it constructs to be a Federal service rendered to States and localities, and not a Federal grant-in-aid program. Accordingly, he states the provisions of section 105(a)(9) do not apply to the Corps' local flood control program. Whatever the technical classification of this program, it appears to us that the subject program is analogous to a Federal grant-in-aid program with the local "matching" share being the provision of the land without cost to the United States.

In enacting the community development program, the Congress gave broad authority to the local sponsors in developing community development programs entitled to assistance. Thus, for example, pursuant to section 105(a) of the 1974 Act, 42 U.S.C. § 5305(a), a program eligible for assistance may include:

"(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is * * * (D) to be used for the provision of public works, facilities and improvements eligible for assistance [under this Act] or (E) to be used for other public purposes * * *." (Emphasis supplied.)

We might also point out that section 105(a)(2) of the 1974 Act, 42 U.S.C. § 5305(a)(2), authorizes, among other things, the use of these funds to acquire or construct public works, facilities and site or other improvements, such as for flood and drainage facilities, in cases where assistance for such facilities under other Federal laws or programs is determined to be unavailable. We know of no other Federal laws or programs that provide assistance for acquisition of a site for a flood control project.

In considering the availability of community development funds under the 1974 Act for the proposed flood control purposes, we have reviewed the following factors discussed above: (1) that the local sponsors are "entitled" to the subject community development block grants including the acquisition of land for public purposes;

B-188363

(2) that the block grants are specifically available to satisfy local grant-in-aid matching fund requirements and that the local flood control program is quite analogous to the normal grant-in-aid situation; and (3) that the grant funds are available for the acquisition and construction of flood and drainage facilities (to the extent that other Federal assistance for such facilities is not available to the applicant).

Although the Flood Control Act, 33 U.S.C. § 701c, supra, continues to require that the land for local flood control projects be furnished by the local sponsor without cost to the United States, it appears to us from the aforementioned factors that Congress intended that the subject funds be used for such purposes as the local sponsor determines proper (within the statutory limitations) for community development and that it would not serve the purposes of, or be consistent with the congressional intent of either that Act or the 1974 Act to preclude the use of these "entitlement" community development block grant funds to purchase the land for the Corps' local flood protection projects.

We therefore advise that we see no legal impediments to acceptance by the Corps of land provided by the city of Prairie du Chien for a local flood protection project, nor to the acceptance of land for other water resources projects under similar circumstances.

R. F. Keller
Deputy Comptroller General
of the United States